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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 397

DUKE POWER COMPANY AND SOUTHERN PUBLIC UTILITIES COMPANY,

Petitioners,

vs.

GREENWOOD COUNTY AND E. L. BROOKS, S. A. AGNEW AND E. I. DAVIS, MEMBERS OF AND CONSTITUTING THE FINANCE BOARD OF GREENWOOD COUNTY, AND HAROLD L. ICKES, AS FEDERAL EMERGENCY ADMINISTRATOR OF PUBLIC WORKS,

Respondents.

APPENDIX TO BRIEF FOR PETITIONERS

INDEX

PERTINENT SECTIONS OF THE NATIONAL INDUSTRIAL RECOVERY ACT 1

ACT NO. 299 OF THE 1933 ACTS OF THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA 7

ACT NO. 1095 OF THE 1934 ACTS OF THE GENERAL ASSEMBLY OF THE STATE OF SOUTH CAROLINA 22

APPENDIX

PERTINENT SECTIONS OF THE NATIONAL INDUSTRIAL RECOVERY ACT.

AN ACT

To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes. (48 Stat. 195).

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled:

TITLE I—INDUSTRIAL RECOVERY

DECLARATION OF POLICY

SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of coöperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources. (48 Stat. 195; 15 U. S. C. 701).

* * * *

TITLE II—PUBLIC WORKS AND CONSTRUCTION PROJECTS

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

SECTION 201. (a) To effectuate the purposes of this title, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint.

(b) The Administrator may, without regard to the civil service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of such experts and such other officers and employees as are necessary to carry out the provisions of this title; and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing and binding) as are necessary to carry out the provisions of this title.

(c) All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

(d) After the expiration of two years after the date of the enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section I has ended, the President shall not make any further loans or grants or enter

upon any new construction under this title, and any agencies established hereunder shall cease to exist and any of their remaining functions shall be transferred to such departments of the Government as the President shall designate; Provided, that he may issue funds to a borrower under this title prior to January 23, 1939, under the terms of any agreement, or any commitment to bid upon or purchase bonds, entered into with such borrower prior to the date of termination, under this section, of the power of the President to make loans. (48 Stat. 200, 40 U. S. C. 401).

SECTION 202. The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and parkways, public buildings, and any publicly-owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbor improvements and flood control and also the construction of any river or drainage improvement required to perform or satisfy any obligation incurred by the United States through a treaty with a foreign Government heretofore ratified and to restore or develop for the use of any State or its citizens water taken from or denied to them by performance on the part of the United States of treaty obligations heretofore assumed: Provided, That no river or harbor improvement shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and

Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks; and if in the opinion of the President it seems desirable, the construction of naval vessels within the terms and/or limits established by the London Naval Treaty of 1930 and of aircraft required therefor and construction of heavier-than-air aircraft and technical construction for the Army Air Corps and such Army housing projects as the President may approve, and provision of original equipment for the mechanization or motorization of such Army tactical units as he may designate: Provided, however, That in the event of an international agreement for the further limitation of armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend, in whole or in part any such naval or military construction or mechanization and motorization of Army units: Provided, further, That this title shall not be applicable to public works under the jurisdiction or control of the Architect of the Capitol or of any commission or committee for which such Architect is the contracting and/or executive officer. (48 Stat. 201; 40 U. S. C. 402).

SECTION 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public works project included in the program prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection

with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase: Provided, That all moneys received from any such sale or lease or the repayment of any loan shall be used to retire obligations issued pursuant to section 209 of this Act, in addition to any other moneys required to be used for such purpose; (4) to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities; and (5) to advance, upon request of the Commission having jurisdiction of the project, the unappropriated balance of the sum authorized for carrying out the provisions of the Act entitled "An Act to provide for the construction and equipment of an annex to the Library of Congress," approved June 13, 1930 (46 Stat. 583); such advance to be expended under the direction of such Commission and in accordance with such Act: Provided, that in deciding to extend any aid or grant hereunder to any State, county, or municipality, the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section and section 202 shall extend to public works in the several States, Hawaii, Alaska, the District of Columbia, Puerto Rico, the Canal Zone, and the Virgin Islands.

(b) All expenditures for authorized travel by officers and employees, including subsistence, required on account of any Federal public-works projects, shall be charged to the amounts allocated to such projects, notwithstanding any other provisions of law; and there is authorized to be employed such personal services in the District of Columbia and elsewhere as may be required to be engaged upon such work and to be in addition to employees otherwise provided for, the compensation of such additional personal services to be a charge against the funds made available for such construction work.

(c) In the acquisition of any land or site for the purposes of Federal public buildings and in the construction of such

buildings provided for in this title, the provisions contained in sections 305 and 306 of the Emergency Relief and Construction Act of 1932, as amended, shall apply.

(d) The President, in his discretion, and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county, or municipality notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county, or municipality to borrow money or incur indebtedness. (48 Stat. 202; 40 U. S. C. 403).

* * * *

SECTION 206. All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, or supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty hours in any one week; (3) that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (A) to citizens of the United States and aliens who have declared their intentions of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in which the work is to be performed: Provided, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage. (48 Stat. 204, 40 U. S. C. 406).

* * * *

ISSUE OF SECURITIES AND SINKING FUND

SECTION 210. (a) The Secretary of the Treasurer is authorized to borrow, from time to time, under the Second Liberty Bond Act, as amended, such amounts as may be necessary to meet the expenditures authorized by this Act, or to refund any obligations previously issued under this section, and to issue therefor bonds, notes, certificates of indebtedness, or Treasury bills of the United States. (48 Stat. 206; 40 U. S. C. 410 (a)).

* * * *

APPROPRIATION

SECTION 220. For the purposes of this Act, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $3,300,000,000. (48 Stat. 210; 40 U. S. C. 411).

Act No. 299 of the 1933 Acts of the General Assembly of the State of South Carolina.

AN ACT to Authorize Any County, Township, City or Incorporated Town of the State of South Carolina to Purchase or Construct a Waterworks System, Water Supply System, Sewer System, Sanitary Disposal Equipment and Appliances, Light Plant or System, Natural Gas System, Ice Plants, Power Plants and/or Distribution Systems, Gas Plants, Incinerator Plants, Hospitals, Piers, Docks, Terminals, Air Ports, Toll Bridges, Ferries, Drainage Systems, Public Markets, Public Recreation Parks, Swimming Pools, Golf Courses and Stadiums, and in Furtherance Thereof to Purchase or Construct Any Necessary Part of Any Such System Either Within or Without the Limits of Such County, Township, City, or Incorporated Town, as the Case May Be: and to Authorize Any County, Township, City or Incorporated Town of the State of South Carolina Now or Hereafter Owning and Operating Any Such System or Plant to Improve, Enlarge, Extend or Repair the Same: and for Any Such

Purpose or Purposes to Authorize Any Such County, Township, City or Incorporated Town to Issue Revenue Bonds Payable Solely from the Revenues Derived from the Operation of Any Such System, Project or Systems: to Regulate the Issuance, Sale, Retirement, and Refunding of Such Bonds and of Other Matters in Connection Therewith: to Regulate the Use of the Revenues of Such System or Systems When Such Bonds are Issued or Outstanding: to Provide for the Operation of Any Such System or Systems in Case of Deficiencies in Such Revenues, and for Other Purposes.

SECTION 1. Sub-Divisions of the State May Purchase, Construct, and/or Improve Waterworks Systems, Water Supply Systems, Sewer Systems, Sanitary Disposal Equipment, Light Plants, Natural Gas Systems, Ice Plants, Power Plants, Gas Plants, Incinerator Plants, Hospitals, Piers, Docks, Terminals, Air Ports, Toll Bridges, Ferries, Drainage Systems, Public Markets, Public Recreation Parks, Swimming Pools, Golf Courses and Stadiums—"System" Defined.

Be it enacted by the General Assembly of the State of South Carolina: That any county, township, city or incorporated town of the State of South Carolina is authorized to purchase or construct a waterworks system, water supply system, sewer system, sanitary disposal equipment and appliances, light plant or system, natural gas system, ice plants, power plants and/or distribution systems, gas plants, incinerator plants, hospitals, piers, docks, terminals, air ports, toll bridges, ferries, drainage systems, public markets, public recreation parks, swimming pools, golf courses and stadiums, and in furtherance thereof to purchase or construct any necessary part of any such system either within or without the limits of *such county*, or the corporate limits of such city or incorporated town, and any county, township, city or incorporated town of the State of South Carolina which may now or hereafter own and operate any such system is authorized to improve, enlarge, extend or repair the same. The work system as used in this Act shall include all of the projects and undertakings referred to in this section.

SECTION 2. Cumulative—Alternate Method.—This Act shall be construed as cumulative authority for the purposes named in Section 1 hereof, and as to the manner and form of issuing revenue bonds for any such purpose or purposes, and shall not be construed to repeal any existing laws with respect thereto, it being the purpose and intention of this Act to create an additional and alternate method for the purposes herein named.

SECTION 3. "Borrower" Defined.—The word "borrower" as used in this Act shall be construed to mean the county, township, city or incorporated town as the case may be, operating under this Act.

SECTION 4. "Borrowing Body" Defined.—The term "governing body" as used in this Act shall be construed to mean, in the case of a county, the Board of County Commissioners, or other like governing body thereof, in the case of a city or incorporated town, the Board of Commissioners, the Mayor and Council, or other like governing body thereof, and in the case of a township the Board of County Commissioners, or the governing body of the County in which the township is located.

SECTION 5. Make Estimate of System.—Whenever the governing body of any borrower shall determine to purchase, construct, improve, enlarge, extend, or repair any system named in Section 1 under the provisions of this Act, it shall first cause an estimate to be made of the cost thereof, and the fact that such estimate has been made and the amount thereof shall appear in the ordinance authorizing and providing for the issuance of the bonds.

SECTION 6. Powers of Borrower.—Ordinances — Resolutions.—For the purposes of this Act any borrower is authorized to adopt ordinances providing for the issuance of revenue bonds as herein stated, and any and all other appropriate ordinances and resolutions deemed necessary to effectuate the full intent and purpose of this Act, including the segregation of revenues derived from the operation of any project named in Section 1 hereof, the determination, fixation and revision from time to time of rates to be charged for services, and

any and all other necessary ordinances and resolutions to protect the properties, to provide for the adequate operation thereof, and to insure the security of the bonds. Provided, However, That in the case of counties and townships the style of any ordinance or resolution adopted under this Act shall be the same as is provided by the laws of the State in the case of cities, and the manner of adoption thereof shall be as is provided in the general laws of the State for cities. The amendment of such ordinances and resolutions of counties shall be as is provided by the general laws of the State for amendment of ordinances of cities. Such ordinances and resolutions of counties shall be recorded in the minutes of the governing body thereof as soon as practicable after their passage and shall be authenticated by the signature of the clerk of such governing body. Any such ordinances or resolutions of counties may be published in a newspaper of general circulation in such county.

SECTION 7. May Borrow—Issue Bonds—Bonds—Payment. For the purpose of defraying the cost of purchasing, constructing, improving, enlarging, extending or repairing any such system or project, any borrower may borrow money and issue its negotiable serial bonds, provided that no such bonds shall be issued unless and until authorized by an ordinance which shall set forth a brief description of the contemplated improvement, the estimated cost thereof, the amount, maximum rate of interest, time and place of payment and other details in connection with the issuance of the bonds. Such serial bonds shall bear interest at not more than six per cent (6%) per annum, payable semi-annually, and shall be payable at such times, not exceeding forty-five (45) years from their date, and at such places as shall be prescribed in the ordinance providing for their issuance. The bonds and the coupons shall be executed in such manner and shall be substantially in the form provided in the authorizing ordinance. Such bonds shall be sold in such manner and upon such terms as the governing body shall deem for the best interests of the borrower. In no event shall any of the bonds be sold on a basis to yield more than six per cent (6%) per annum from the date

of sale to the date of average maturity of the bonds sold. Provided, however, That in any contract for the purchase or construction of any system or project named in Section 1, or for the improvement, enlargement, extension or repair of any such system or project provision may be made that payment therefor shall be made in such bonds. Such bonds and their coupons may be made payable in lawful money of the United States of America, or in gold coin of the standard weight and fineness existing on the date thereof. Such bonds shall mature annually, or semi-annually and the first installment thereof shall be made payable not more than five (5) years from the date of such bonds. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same issue. If all the bonds of an issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. The principal of and interest upon such bonds shall be payable solely from the revenue derived from the operation of the system or project for the purchase, construction, improvement, enlargement, extension, or repair of which the same are issued; Provided, however, That where a borrower improves, enlarges, extends, or repairs any system or project named in Section 1 the principal of and interest upon such bonds may be made payable from the revenues derived from the operation of the entire system or project. No bond or coupon issued pursuant to this Act shall constitute an indebtedness of such borrower within the meaning of any State constitutional provision or statutory limitation. It shall be plainly stated on the face of each such bond and coupon that the same has been issued under the provisions of this Act and that it does not constitute an indebtedness of such borrower within any State constitutional provision or statutory limitation. Provided, however, That any municipality now or hereafter owning and operating a system or project named in Section 1, whether constructed under the provisions of this Act or not, and desiring to improve, enlarge, extend or repair the same, may issue revenue bonds under the provisions of this Act to pay for such improvements, enlargements, extensions or repairs, payable from the net revenues to be derived from the operation of the existing system or project

as improved, enlarged, extended or repaired, but nothing in this proviso shall be construed as authorizing any such municipality to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention hereof being to authorize the pledging, setting aside and segregation of such revenues for the construction of such improvements, enlargements, extensions or repairs only where consistent with outstanding obligations of such municipality.

SECTION 8. Bond Holders Have Lien on System.—There shall be created in the authorizing ordinance a statutory lien upon any such system or project, and the appurtenances and extensions thereto so to be purchased, constructed, improved, enlarged, extended or repaired, to and in favor of the holders of said bonds and each of them and to and in favor of the holders of the coupons of said bonds, and each of them. Provided, however, That where any borrower purchases, constructs, improves, enlarges, extends or repairs any system or project named in Section 1, said statutory lien may be created and declared to be upon the whole of such combined system or project with appurtenances and extensions thereto, if the governing body so determines.

SECTION 9. Enforcement of Lien of Bond Holders.—Such system project or combined system so purchased, constructed, improved, enlarged, extended or repaired shall remain subject to said statutory lien until payment in full of the principal of and interest upon said bonds. Any holder of any said bonds or of any of the coupons representing interest accrued thereon, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce said statutory lien and may, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties of the officials of the borrower, including the fixing of sufficient rates, the collection of revenues, the proper segregation of the revenues of the project or combined system, and the proper application thereof. Provided, however, That said statutory lien shall not be construed to give any such bond or coupon

holder authority to compel the sale of such project or combined system or any part thereof.

SECTION 10. Receiver—Appointment—Duties and Powers. If there be any default in the payment of the principal of or interest upon any of said bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the system, project or combined system so encumbered on behalf of the borrower with power to fix and charge rates and collect revenues sufficient to provide for the payment of any bonds or other obligations outstanding against said systems or combined system and for the payment of the expenses of operating and maintaining the same and to apply the income and revenues of said system, project or combined system in conformity with this act and the ordinance providing for the issuance of such bonds.

SECTION 11. Limitations of Bonds.— The bonds authorized hereunder shall not be subject to any limitations or provisions of the municipal bond code or the bond laws for counties as now in force or hereafter amended.

SECTION 12. Bonds Legal Inyestments.—Bonds issued under the provisions of this Act are legal investments for executors, administrators, trustees and other fiduciaries and for savings banks and insurance companies organized under the laws of this State.

SECTION 13. Bonds Tax Exempted.—The bonds and interest coupons issued hereunder are hereby exempted from any and all State, County, municipal and other taxation whatsoever under the laws of the State of South Carolina, and it shall be plainly stated on the face of each such bond as follows: "The principal of and interest on this bond are exempted from any and all State, county and municipal and other taxation whatsoever under the laws of the State of South Carolina."

SECTION 14. Bonds Negotiable.—Such bonds shall have all the qualities of negotiable instruments under the law merchant and the negotiable instruments law.

SECTION 15. Deposit Proceeds from Bonds.—The governing body, where practicable, shall require that the proceeds of the sale of bonds issued under the provisions of this Act be deposited in a special account or accounts in a bank or banks which are members of the Federal Reserve System, and shall require, insofar as practicable, that each such deposit be secured by United States Government securities having an aggregate market value at least equal to the sum at the time on deposit, or in any event, the proceeds shall be deposited in some bank or other depository, either within or without the State, which will secure such deposit satisfactorily to said governing body.

SECTION 16. Use of Proceeds from Bonds.—All moneys received from any such bonds shall be used solely for the purchase, construction, improvement, enlargement, extension or repair of the system, project or combines system for which issued, including any engineering, legal and other expenses incident thereto; Provided, however, That such moneys may be used also to advance the payment of the interest on such bonds during the first three (3) years following the date of such bonds. Provided, That any unexpended balance of the proceeds of the sale of any such bonds remaining after the completion of the project for which issued shall be paid immediately into the Bond and Interest Redemption Fund for such bonds, and the same shall be used only for the payment of the principal of the bonds, or, in the alternative, to acquire outstanding bonds of the general issue from which the proceeds were derived, by purchase of such bonds at a price (exclusive of accrued interest) not exceeding the face amount thereof. Any bonds so acquired by purchase shall be cancelled and shall not be reissued.

SECTION 17. Undelivered Bonds Executed by Ex-officers Valid.—In case any of the officers whose signatures or counter-signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures or counter-signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

SECTION 18. Payment for Service by Borrower.—No free service shall be furnished by any such system or combined system to the county, township, city or incorporated town or to any agency, instrumentality, person, firm or corporation. The reasonable cost and value of any service rendered to any such borrower by any such system, project or combined system shall be charged against the borrower and shall be paid for monthly as the service accrues from the current funds, or from the proceeds of taxes which such borrower, within constitutional limitations, is hereby authorized and required to levy in an amount sufficient for that purpose, and such funds, when so paid, shall be accounted for in the same manner as other revenues of such system or combined system.

SECTION 19. Additional Bonds.—Any borrower purchasing, constructing, improving, enlarging or repairing any such system, project or combined system pursuant to the provisions of this Act, may, at the time of the authorization of such bonds for any such purpose or purposes, provide in the authorizing ordinance for additional bonds for other extensions and permanent improvements, which additional bonds may be issued and be negotiated from time to time as such proceeds for such purpose may be necessary. Such bonds, when so negotiated, shall have equal standing with the bonds of the same issue.

SECTION 20. Revenue Refunding Bonds.—Where a borrower has outstanding any bonds issued under the provisions of this Act, it may thereafter issue and negotiate new bonds on such terms as the governing body shall deem advisable for the purpose of providing for the payment of any such outstanding bonds. Such new bonds shall be designated "revenue refunding bonds," and shall be secured to the same extent and shall have the same source of payment as the bonds which have been thereby refunded.

SECTION 21. Rates for Service.—Rates for services furnished by any such system or combined system shall be fixed precedent to the issuance of the bonds. Such rates shall be sufficient to provide for the payment of the interest upon and

the principal of all such bonds as and when the same become due and payable, to create a Bond and Interest Redemption Fund therefor, to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the system or combined system necessary to preserve the same in good repair and working order, to build up a reserve for depreciation of the existing system, project or combined system, and to build up a reserve for improvements, betterments and extensions to the existing system, project or combined system other than those necessary to maintain the same in good repair and working order as hereinbefore in this Section provided. Such rates shall be fixed and revised from time to time so as to produce these amounts, and the governing body shall covenant and agree in the ordinance authorizing the issuance of such bonds, and on the face of each bond at all times to maintain such rates for services furnished by such system, project or combined system as shall be sufficient to provide for the foregoing.

SECTION 22. Bond and Interest Redemption Fund.—Operation and Maintenance Fund—Depreciation Fund—Contingent Fund.—In the authorizing ordinance the governing body of the borrower shall set aside monthly (or oftener if deemed advisable) and shall pledge the gross revenues of the system, project or combined system into separate and special funds as follows: Out of the gross revenues there shall be first set aside a sum sufficient to pay the principal of and the interest upon the bonds as and when the same become due and payable. In the event that the gross revenues of any calendar, operating or fiscal year, shall be insufficient to pay the principal of and interest on the bonds maturing in any such calendar, operating, or fiscal year, then an additional amount sufficient to pay the principal of and interest on such bonds outstanding and unpaid shall be set aside out of the gross revenues of the next succeeding calendar, operating, or fiscal year and applies to the payment of the principal of and interest on such outstanding and unpaid bonds. This fund shall be designated "Bond and Interest Redemption Fund." Out of the remaining gross revenues there shall be next set aside a sum sufficient to provide for the payment of all expenses of administration, oper-

ation, and such expenses for maintenance as may be necessary to preserve the system or combined system in good repair and working order. This fund shall be designated "Operation and Maintenance Fund." Out of the remaining gross revenues there shall be next set aside a sum sufficient to build up a reserve for depreciation of the existing system or combined system. This fund shall be designated "Depreciation Fund." Out of the remaining gross revenues there shall be next set aside a sum sufficient to build up a reserve for improvements, betterments and extensions to the existing system, project or combined system other than those necessary to maintain the same in good repair and working order as hereinbefore provided for. This fund shall be designated "Contingent Fund." Any surplus revenues thereafter remaining shall be disposed of by the governing body of the borrower as it may determine from time to time to be for the best interest of the borrower. Provided, However, that in the segregation and separation of said gross revenues into the several funds in this Section stated, the governing body may prescribe a reasonable excess amount to be placed in the Bond and Interest Redemption Fund from time to time during the earlier years of maturities of such bonds as thereby to produce and provide a cushion fund to meet any possible deficiencies therein in maturities of future years, and in the event that such excess amounts are thus provided, provision may be made in the ordinance for the scaling down of the amounts of such future years in the event the surplus so provided in the earlier years may then be found to have been accumulated and to be available. Bonds issued under the provisions of this Act shall be payable solely from the revenues in said Bond and Interest Redemption Fund.

SECTION 23. Payment Expenses of Operation or Maintenance.—Nothing in this Act shall be construed to prohibit the borrower from appropriating and using any part of its available income or revenues derived from any source other than from the operation of such system, project or combined system in paying any immediate expenses of operation or maintenance of any such system, project or combined system, but nothing in this Act shall be construed to require the borrower to do so.

SECTION 24. Custodian of Gross Revenues—Trust Funds.—The governing body of the borrower shall designate as custodian of the gross revenues from the operation of the system or combined system a bank or trust company duly qualified and doing business within the State of South Carolina, which shall be satisfactory to the governing body of such borrower. The Bank or trust company shall signify its acceptance of such custodianship by a written instrument directed to the governing body of the borrower. All funds from time to time derived from the operation of such system, project or combined system, or funds of the borrower supplemental to the Operation and Maintenance Fund, the Depreciation Fund and/or Contingent Fund shall be deposited by such borrower with such bank or trust company and be set apart by such bank or trust company pursuant to written instructions from such borrower into the appropriate fund or funds designated in Section 22 of this Act. Each and all of said designated funds from time to time held by such bank or trust company shall be impressed with a trust for the benefit of the person or persons entitled thereto.

SECTION 25. Year Basis.—The ordinance authorizing the issuance of such bonds shall definitely determine whether such system, project or combined system shall be operated upon a calendar, operating or fiscal year basis, and the dates of the beginning and ending of same.

SECTION 26. Surplus in Operation and Maintenance Fund—Disposition.—If any surplus shall be accumlated in the Operation and Maintenance Fund which shall be equal to the cost of operating and maintaining such system, project or combined system during the remainder of the calendar, operating or fiscal year, as provided by the authorizing ordinance, and the cost of operating and maintaining such system, project or combined system during the succeeding like calendar, operating or fiscal year, any such surplus may be transferred at any time by the governing body to the Depreciation Fund, Contingent Fund, or to the Bond and Interest Redemption Fund.

SECTION 27. Surplus in Depreciation Fund—Disposition.—If any surplus shall be accumulated in the Depreciation Fund

over and above that which the governing body shall find may be necessary therein during the then present calendar, operating or fiscal year and the next ensuing calendar, operating or fiscal year, any such excess may be transferred to the Contingent Fund or the Bond and Interest Redemption Fund.

SECTION 28. Surplus in Contingent Fund—Disposition.—If any surplus shall be accumulated in the Contingent Fund over and above that which the governing body shall find may be necessary for reasonable and proper improvements, betterments, and extensions to the existing system or combined system during the present calendar, operating or fiscal year and the next ensuing calendar, operating or fiscal year, any such excess may be transferred to the Bond and Interest Redemption Fund or may be applied, in so far as possible, in the purchase or retirement of outstanding bonds issued under the provisions of this Act, and for that purpose the governing body is authorized to purchase such bonds not due in the open market at not more than the fair market value thereof. Where such bonds are purchased for investment the income from such investment shall be carried into the Contingent Fund.

SECTION 29. Regulation of Rates—Franchise—No Effect on State Board of Health.—Rates charged for services furnished by any system or combined system purchased, constructed, improved, enlarged, extended or repaired under the provisions of this Act shall not be subject to supervision or regulation by any State bureau, board, commission or other like instrumentality or agency thereof, and it shall not be necessary for any borrower operating under the provisions of this Act to obtain any franchise or other permit from any State bureau, board, commission or other instrumentality thereof in order to construct, improve, enlarge, extend or repair any system or combined system named in this Act. Provided, however, That the functions, powers and duties of the State Board of Health shall remain unaffected by this Act.

SECTION 30. Books and Accounts—Annual Report—Inspection.—Any borrower issuing revenue bonds under the provisions of this Act shall install and maintain proper books of record and account (separate entirely from other records

and accounts of such borrower) in which full and correct entries shall be made of all dealings or transactions of or in relation to the properties, business and affairs of the system or combined system. The governing body of such borrower, not later than three months after the close of any calendar, operating or fiscal year, shall cause to be prepared a balance sheet and an income and surplus account, showing respectively, in reasonable detail the financial condition of the system or combined system at the close of such preceding calendar, operating or fiscal year and the financial operations thereof during such year. Said balance sheets and income and surplus accounts shall at all reasonable times during usual business hours be open to examination and inspection by any taxpayer, user of the services furnished by the system, or any holder of bonds issued under the provisions of this Act, or anyone acting for or on behalf of such taxpayer, user of the services of the system, or bondholder.

SECTION 31. Pay Bonds Before Maturities.—The governing body of the borrower authorizing bonds under the provisions of this Act may make provision for any of such bonds to be called for payment on any interest payment date before maturity provided the borrower shall have on hand in its Bond and Interest Redemption Fund sufficient moneys not otherwise appropriated or pledged, in excess of the interest and principal requirements within the next two succeeding calendar, operating, or fiscal years.

SECTION 32. No Effect on Existing Contracts and Liens.—Nothing in this Act shall be construed as authorizing any borrower to impair or commit a breach of the obligation of any valid lien or contract created or entered into by it, the intention hereof being to authorize the pledging, setting aside and segregation of gross revenues only where consistent with outstanding obligations of such borrower.

SECTION 33. Issue Bonds without Election or Notice.—This Act shall be construed as authorizing the issuance of such bonds provided for herein without submitting the proposition for the approval of same to the voters of the borrower. Where bonds are authorized under this Act it shall not be

necessary to make publication of any ordinance, resolution, notice or proceeding relating thereto. Provided, however, That nothing in this Act shall be construed to prohibit the governing body from making such publication as it may deem necessary in relation thereto.

SECTION 34. Construe Liberally.—This Act, being necessary for and to secure the public health, safety, convenience and welfare of the counties, townships, cities and incorporated towns of the State of South Carolina, shall be liberally construed to effect the purposes hereof.

SECTION 35. State Bond Commissioner—Duties—Time to Test Validity of Bonds.—For the protection of purchasers of any bonds authorized pursuant to the provisions of this Act, the Attorney General is hereby made Ex-officio Bond Commissioner of the State of South Carolina. It shall be the duty of such Bond Commissioner to prepare uniform forms and prescribe a method of procedure under the laws of the State in all cases where it is desired to issue said bonds in any county, township, city or incorporated town of the State of South Carolina; and it shall be the further duty of said Bond Commissioner to examine into and pass upon any of said bonds so issued, and said bonds, when declared by the certificate of said Bond Commissioner to be issued in accordance with this Act and the forms of procedure so provided, shall be incontestable in any court in the State of South Carolina unless suit thereon shall be brought in a court having jurisdiction of the same within thirty (30) days from the date of the approval of said bonds by the Bond Commissioner. No bond hereafter issued by any county, township, city or incorporated town pursuant to this Act shall be valid without the certificate of said Bond Commissioner.

SECTION 35-A. State Sinking Fund Commission Approve Bonds.—All Bonds authorized pursuant to the provisions of this Act shall be subject to the approval of the Sinking Fund Commission of the State of South Carolina and no bonds issued under the provisions of this Act shall be valid without the certificate of approval of the Sinking Fund Commission.

SECTION 36. Saving Clause.—The invalidity of any section, sentence, clause, paragraph or portion of this Act shall not affect the validity of the remainder of this Act.

Act No. 1095 of the 1934 Acts of the General Assembly of the State of South Carolina.

AN ACT to Authorize and Empower the Finance Board for Greenwood County to Contract with the Public Works Administration; to Perform such Acts and Duties as may be Necessary and Incident to Securing a Loan, or Loans, for a Hydro-Electric Project; to Define and Limit its Duties and Powers; to Empower the said Board to Borrow Pursuant to Authority Conferred by any Other Statute for the Purposes Named Herein and Especially Under the Provisions of an Act Entitled "An Act to Authorize any County, Township, City or Incorporated Town, Etc." Designated as Act No. 299 of the Acts of the General Assembly of 1933.

SECTION 1. Finance Board, Greenwood County, Borrow for Hydro-Electric Plant.—*Be it enacted by the General Assembly of the State of South Carolina:* That the Finance Board of Greenwood County is authorized and empowered to borrow from the Public Works Administration, or any other agency or corporation, organized under the Federal Government or pursuant to any Act of the Congress of the United States, the proceeds of any such loan to be used for the purpose of acquiring any necessary lands, easements and rights of way for a hydro-electric plant and for the construction thereof at a dam at or near "Buzzard Roost" on Saluda River and for the purchase of any and all necessary machinery or other equipment used in connection with the operation of any such plant, with the further right to construct and maintain power transmission lines.

SECTION 2. Powers of Board—Project Self Liquidating.—The said Finance Board of Greenwood County is authorized and empowered to do any and all acts necessary and incident to securing any such loans and to execute evidence of indebted-

ness therefor under such agreement as the said Board and the agency or the corporation from whom the loan is obtained may agree upon. They are empowered to pledge the property acquired as well as the income therefrom to the retirement of any such loan.

It is declared that this project is a self liquidating project and that any indebtedness or obligation created by the said Board shall not be a direct and primary obligation of the County of Greenwood; bonds or securities issued hereunder to be in accordance with the terms, conditions and powers granted and given in Act No. 299 of the Acts of the General Assembly, 1933, including all amendments thereto.

SECTION 3. Keep Funds Separate.—All funds borrowed pursuant to the authority conferred in this Act, as well as in pursuance of the authority conferred by any other statute, to be used for the purposes named herein, shall be kept separate and distinct from other funds of Greenwood County and not comingled or intermingled with the finances of the said County in any respect.

SECTION 4. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

SECTION 5. This Act shall take effect upon its approval by the Governor.

Approved the 12th day of April, 1934.